

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
COUNTY OF FRANKLIN, PENNSYLVANIA	)	File Nos. 0003388020, 0003390336
	)	
Request For Waiver Pursuant to Section 337(c) of	)	
the Communications Act of 1934, as Amended,	)	
and Section 1.925 of the Commission's Rules, to	)	
Operate a County-Wide Simulcast Public Safety	)	
Radio System Using Frequencies in the Television	)	
Channel 18 (494-500 MHz) Band	)	

**ORDER**

**Adopted: June 24, 2010****Released: June 24, 2010**

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. The County of Franklin, Pennsylvania (Franklin or the County), filed two applications and a request for waiver to use frequencies in the television (TV) Channel 18 band (494-500 MHz) for public safety communications.<sup>1</sup> Franklin seeks waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),<sup>2</sup> or, alternatively, Section 1.925 of the Commission's rules.<sup>3</sup> As further detailed below, we find that Franklin has failed to meet the criteria for a waiver under Section 337 of the Act. However, Franklin has made the requisite showing to warrant a waiver pursuant to Section 1.925 of the rules. Accordingly, we grant Franklin's waiver request subject to the conditions specified herein.

**II. BACKGROUND**

2. Franklin states that it "is planning to upgrade its radio system with a modern, multi-site, simulcast system."<sup>4</sup> In addition, the County states that "its existing system consists of a mix of low band VHF, high band VHF, and UHF radio equipment."<sup>5</sup> The County asserts that "[t]he multiple bands make

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<sup>1</sup> See File Nos. 0003388020 (filed April 7, 2008, amended April 18, 2008, September 4, 2009, October 14, 2009, and April 27, 2010) and 0003390336 (filed April 9, 2008, amended September 4, 2009, October 14, 2009, and April 27, 2010) attached "County of Franklin, Pennsylvania Request for Waivers Sections 2.106, 90.303, 90.305(a), and 90.311" (Request for Waivers).

<sup>2</sup> 47 U.S.C. § 337(c).

<sup>3</sup> 47 C.F.R. § 1.925.

<sup>4</sup> Request for Waivers at 1.

<sup>5</sup> *Id.*

county-wide interoperability nearly impossible.”<sup>6</sup> The County intends to “standardize on a UHF system that will be utilized by the various departments and agencies in the county.”<sup>7</sup>

3. The County states that “[i]n an attempt to improve interoperability and coverage, the County contracted with the consulting firm of L. Robert Kimball [Kimball] & Associates to review the current radio systems, determine what improvements are needed, and provide a design for a new radio system.”<sup>8</sup> Franklin asserts that “[b]ecause of the coverage provided by UHF and because of the potential for the County to utilize much of its current UHF infrastructure, Kimball recommended that the new system be developed on UHF frequencies.”<sup>9</sup> Franklin states that the system “consists of a six site, six channel, trunked, simulcast system and a single site, six channel, trunked system.”<sup>10</sup> In addition, Franklin states that “[e]ach repeater site will be linked to a central controller such that the stations function as one system.”<sup>11</sup>

4. Franklin states that “[t]he County requested Fox Ridge Communications, Inc. (“Fox Ridge”) to review its existing UHF channels and also conduct a frequency search for other UHF channels that could be utilized for the new system.”<sup>12</sup> Franklin asserts that “Fox Ridge found that of all of the potential UHF public safety channels, only one was potentially available and use of that channel would likely result in interference to incumbent licensees.”<sup>13</sup> Franklin maintains that “[a]ll other channels were blocked by the incumbent licensees and thus did not comply with the centralized trunking rules found in Section 90.187(b) of the Commission’s rules.”<sup>14</sup> Furthermore, Franklin states that its goal was to find an interference-free channel that would not cause interference to other television stations and “[c]hannel 18 meets that criteria [sic].”<sup>15</sup> The County states that “[a]ll simulcast channels will be operating with a maximum bandwidth of 12.5 kHz.”<sup>16</sup> Franklin County asserts that “[t]he intent of the new system is to provide excellent coverage to Franklin County, which requires use of wide-area technology.”<sup>17</sup> The

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> File Nos. 0003388020 and 0003390336, attached “System Description, Request for Waiver, Request for Extended Implementation And Shared Infrastructure” (System Description) at 1-2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> File Nos. 0003388020 and 0003390336, attached “Supporting Statement for Modification of Applications File Numbers 0003388020 and 0003390336 Franklin County, Pennsylvania” (filed April 27, 2010) (Supporting Statement).

<sup>11</sup> System Description at 7.

<sup>12</sup> *Id.* at 2. *See also* File Nos. 0003388020 and 0003390336, attached “UHF Channel Study for Franklin County, Pennsylvania.”

<sup>13</sup> System Description at 2.

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> Request for Waivers at 3.

<sup>16</sup> System Description at 7.

<sup>17</sup> *Id.*

County also states that it “desires to share the system with other Public Safety organizations once it becomes operational.”<sup>18</sup>

5. The frequencies requested by Franklin are not available for assignment to public safety entities under Part 90 of the Commission’s rules.<sup>19</sup> While the Commission’s rules allocate TV Channel 18 to the private land mobile radio service (PLMRS), the rules only authorize base stations within 80 kilometers of the geographic center of certain cities.<sup>20</sup> Franklin requests waiver of Sections 2.106, 90.303, 90.305(a), and 90.311, because the County is beyond 80 kilometers from any city specified by rule for utilization of television (T-Band) channels for PLMRS.<sup>21</sup> In addition, Franklin requires a waiver of Section 90.307(d)<sup>22</sup> to allow its proposed base stations to be short-spaced to TV Station WPCW, Jeannette, Pennsylvania, which operated on TV Channel 19 prior to the DTV transition conclusion.<sup>23</sup> Finally, the County requests a waiver of Section 90.313(c), which requires the County to show that an assigned frequency pair is at full capacity before Franklin may be assigned an additional frequency pair.<sup>24</sup>

6. On August 14, 2009, the Public Safety and Homeland Security Bureau (Bureau) placed Franklin’s waiver request and associated applications on public notice.<sup>25</sup> No parties opposed the waiver request. Franklin filed reply comments in which it “affirms all of the arguments made in the original request.”<sup>26</sup> Franklin again asserts that based on the work done by its consultant, UHF frequencies are best suited to meet the County’s needs for a new communications system, given the terrain in the County.<sup>27</sup> In addition, the County argues that the “[u]se of 700 MHz would require the County to buy all new equipment and not be able to leverage any of its current UHF equipment.”<sup>28</sup> Furthermore, Franklin states that “[m]ore fixed infrastructure would also be required for the equivalent coverage” and that “[i]t is likely that two to three times the number of the fixed repeaters would be required.”<sup>29</sup> Franklin therefore

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<sup>18</sup> *Id.* at 10.

<sup>19</sup> 47 C.F.R. Part 90.

<sup>20</sup> *See* 47 C.F.R. §§ 2.106, 90.303, 90.305(a).

<sup>21</sup> System Description at 3. Our independent analysis indicates that Franklin County’s most distant base station would be located 149.2 km from the Washington, DC/MD/VA geographic center coordinates.

<sup>22</sup> 47 C.F.R. § 90.307(d).

<sup>23</sup> The minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 km (90 miles). *Id.* We note that Station WPCW vacated TV Channel 19 at the end of the DTV transition and now operates digitally on TV Channel 11. Notwithstanding the DTV transition, 47 C.F.R. § 90.307(e) states that the TV stations to be protected are identified in the Commission’s publication “TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz,” which includes Station WPCW’s predecessor, WJNL-TV on TV Channel 19.

<sup>24</sup> *See* System Description at 9. *See also* 47 C.F.R. § 90.313(c).

<sup>25</sup> *See* Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by the County of Franklin, Pennsylvania to Operate a County-Wide Simulcast Public Safety Radio System Using Frequencies in the Television Channel 18 (494-500 MHz) Band, *Public Notice*, 24 FCC Rcd 10766 (PSHSB 2009) (*Public Notice*).

<sup>26</sup> *See* Reply Comments to DA-09-1814, In the Matter of Franklin County, Pennsylvania, filed by Franklin County, Pennsylvania on September 9, 2009 (Reply Comments).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

concludes that even if 700 MHz could be used, “it would be more costly and less efficient.”<sup>30</sup> Franklin maintains that “T-band is the only viable solution for Franklin County” and that “[u]se of channel 18 television will have no impact on current or future full service DTV stations.”<sup>31</sup>

### III. DISCUSSION

7. Section 337(c) of the Act provides that the Commission “shall waive . . . its regulations implementing th[e] Act (other than its regulations regarding harmful interference) to the extent necessary to permit” entities “seeking to provide public safety services” to use unassigned spectrum not allocated to public safety if the Commission makes five specific findings: (i) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use; (ii) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations; (iii) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (iv) the unassigned frequency was allocated for its present use not less than two years prior to the date on which the application is granted; and (v) granting such application is consistent with the public interest.<sup>32</sup>

8. When considering waiver requests filed pursuant to Section 337(c) of the Act, we must first determine whether the applicant is an “entity seeking to provide public safety services.”<sup>33</sup> The Act defines public safety services as “services – (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided – (i) by State or local government entities; or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.”<sup>34</sup> Franklin, a local government entity, states that “the requested licenses will allow the County to build a modern communications system in further support of the safety of life and property.”<sup>35</sup> Based on the information before us, we find that Franklin is an entity that provides public safety services as defined by the statute.

9. Next, we consider whether Franklin’s petition satisfies the specific showing requirements mandated by Section 337(c) of the Act. We note that an applicant’s failure to meet any one of the five criteria constitutes sufficient cause for the Commission to deny a request for waiver under Section 337(c).<sup>36</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2.

<sup>32</sup> 47 U.S.C. § 337(c).

<sup>33</sup> *See* 47 U.S.C. § 337(f).

<sup>34</sup> *Id.*

<sup>35</sup> Request for Waivers at 9.

<sup>36</sup> *See* South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*); Township of Cinnaminson, New Jersey, *Order*, 22 FCC Rcd 4583, 4585 ¶ 6 (PSHSB 2007) (*Cinnaminson*), *citing* University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB PSPWD 2001). *See also* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22768-69 ¶ 131 (2000).

10. We find that Franklin has not demonstrated that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,” pursuant to subsection 337(c)(1)(A) of the Act.<sup>37</sup> Since Franklin first filed its applications on April 9, 2008, broadcasters have vacated the 700 MHz band as a result of the June 12, 2009 conclusion of the DTV transition. The Region 36 700 MHz Plan, which includes provisions for Franklin, is approved by the Bureau.<sup>38</sup> In its Reply Comments, Franklin states that “[t]he CAPRAD channel plan allots nine 25.0 kHz channels to Franklin” and “[w]hile this would appear to be almost an adequate number of channels, especially if broken into 18 12.5 kHz bandwidth channel pairs, it is still less than the 22 needed and no frequencies would be available for fire-ground.”<sup>39</sup> Franklin further argues that “[t]he more critical issue is the difference in infrastructure that would be required” as the “[u]se of 700 MHz would require the County to buy all new equipment and not be able to leverage any of its current UHF equipment.”<sup>40</sup> In addition, Franklin states that “[i]t is likely that two or three times the number of fixed repeaters would be required” and “even if 700 MHz could be used, it would be more costly and less efficient.”<sup>41</sup>

11. Despite Franklin’s band preference, Section 337 of the Act compels us to consider the 700 MHz band public safety channels to be immediately available and ready for assignment.<sup>42</sup> And while Franklin initially argued that the 700 MHz band would not accommodate the needed number of frequencies, Franklin has since amended its request to reduce the number of requested channels, and as such it appears that the Region 36 700 MHz Plan offers sufficient capacity for all of Franklin’s proposed operations.<sup>43</sup>

12. The Commission has previously apprised Section 337 applicants that “the statute requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the Section 337 applicant seeks to provide public safety services.”<sup>44</sup> Consistent with the Commission’s position, the Bureau and the Wireless

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<sup>37</sup> 47 U.S.C. § 337(c)(1)(A).

<sup>38</sup> See Region 36 700 MHz Plan, Version 1.1, WT Docket No. 02-378, PS Docket No. 06-229 (filed Sept. 9, 2009) (Region 36 700 MHz Plan). See also Public Safety and Homeland Security Bureau Approves Region 36 (Western Pennsylvania) 700 MHz Regional Plan, WT Docket No. 02-378, *Public Notice*, 25 FCC Rcd 27 (2010).

<sup>39</sup> Reply Comments at 1. Subsequently, Franklin amended its applications to reduce the number of requested channels to twelve. Franklin states that “[t]he new design is more spectrally efficient in that fewer land mobile channels are being used.” See Supporting Statement at 1.

<sup>40</sup> Reply Comments at 1.

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., County of Los Angeles, California, *Order*, 23 FCC Rcd 18389, 18398 ¶ 19 (PSHSB 2008) (disagreeing with NPSTC’s assertion that the 700 MHz band should be considered after the DTV transition date). We note that while the Region 36 plan was pending, the County could have sought authority to operate on 700 MHz general use spectrum by requesting special temporary operating authority. See Public Safety and Homeland Security Bureau Announces an Extension of the Deadline for 700 MHz Regional Planning Committees to Amend 700 MHz Narrowband Plans from November 23, 2007 to January 31, 2008, PS Docket No. 06-229, WT Docket No. 96-86, *Public Notice*, 22 FCC Rcd 19461 (PSHSB 2007).

<sup>43</sup> See Supporting Statement at 1. See also Region 36 700 MHz Plan at 135 (allotting nine 25 kHz channels to Franklin County).

<sup>44</sup> In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709, 22769 ¶ 132 (2000) (*Balanced Budget Act Report and Order*) (footnotes omitted); see also H.R. Conf. Rep. No. 105-217, (continued....)

Telecommunications Bureau have rejected the argument that an applicant must only show either the unavailability of frequencies in its preferred public safety band or, conversely, the unsuitability of frequencies in other public safety bands, for purposes of satisfying Section 337(c) of the Act.<sup>45</sup> Based on the facts before us, we cannot find that no public safety spectrum is immediately available to satisfy the requested public safety service use. Because Franklin has failed to satisfy one of the five criteria under 337; specifically, that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,” we need not address its arguments regarding the remaining four criteria of Section 337 of the Act.<sup>46</sup>

13. However, our finding that Franklin does not warrant waiver relief pursuant to Section 337 of the Act does not foreclose our consideration of Franklin’s alternative request for waiver relief pursuant to Section 1.925 of the Commission’s rules.<sup>47</sup> The ability of the Commission to waive its rules stems from the Commission’s plenary authority under the Act to take the actions necessary to achieve the Commission’s over-arching statutory purposes, which include “promoting safety of life and property through the use of radio communication.”<sup>48</sup> Section 1.925 provides the Commission the necessary flexibility to achieve its statutory objective of safeguarding life and property by considering an applicant’s request for waiver relief according to the standards that an applicant must meet under the rule.<sup>49</sup> We find that Franklin has presented sufficient information for us to consider whether waiver relief is justified under Section 1.925.

14. Section 1.925 states that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>50</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>51</sup> An applicant seeking a waiver faces a high hurdle and must plead with

(Continued from previous page)

105th Cong., 1st Sess., at 579-80 (1997) (“Conference Report”) (“spectrum must not be immediately available on a frequency already allocated to public safety services.”).

<sup>45</sup> See County of Marin, California, *Order*, 22 FCC Rcd 9165, 9167-68 ¶ 6 (PSHSB PD 2007); State of Ohio, *Memorandum Opinion and Order*, 17 FCC Rcd 439, 446-47 ¶ 15 (WTB PSPWD 2002) (*Ohio*); State of Tennessee Department of Transportation, *Order on Reconsideration*, 15 FCC Rcd 24645, 24648-49 ¶ 9 (WTB 2000).

<sup>46</sup> See, e.g., Hennepin County, *Order*, 14 FCC Rcd 19418 (WTB 1999) (having noted failure of Hennepin County to meet one of the criteria, Bureau did not address remainder); New Hampshire Department of Transportation (NHDOT), *Memorandum Opinion and Order*, 14 FCC Rcd 19438, 19442 (WTB 1999) (after having determined that New Hampshire failed to demonstrate that no other spectrum allocated to public safety service was immediately available, Bureau noted that it “need not address whether NHDOT has submitted evidence that would allow us to make the other findings required by Section 337(c)(1) of the Act.”).

<sup>47</sup> See Ocean County, New Jersey, *Order*, DA 09-1976 (PSHSB PD) (rel. Aug. 31, 2009) at 7 ¶ 16. *Balanced Budget Act Report and Order* at 22769 ¶ 132 n.366, citing 47 C.F.R. § 1.925. See also Letter to Alan S. Tilles, Esq., 22 FCC Rcd 13577, 13581 & n.30 (WTB Mobility Div.) (noting that “[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules.”).

<sup>48</sup> 47 U.S.C. § 151; see also 47 U.S.C. §§ 154(i), 303(r).

<sup>49</sup> See 47 C.F.R. 1.925 (providing that “[t]he Commission *may* waive specific requirements of the rules upon its own motion or upon request”) (emphasis added). See 47 C.F.R. § 1.925(b)(3)(i)-(ii) (setting forth the criteria).

<sup>50</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>51</sup> 47 C.F.R. § 1.925(b)(3)(ii).



particularity the facts and circumstances that warrant a waiver.<sup>52</sup> Based on the information before us, we conclude that a grant of Franklin's waiver request is warranted under the first prong of the waiver standard. We proceed with analyses of each rule for which Franklin requests waiver.

15. *Sections 2.106, 90.303, and 90.305(a).* Section 90.305(a) requires PLMRS base stations operating in the 470-512 MHz band to be located within 50 miles (80 kilometers) of the geographic centers of urbanized areas listed in Section 90.303.<sup>53</sup> Section 2.106 codifies this provision in the Commission's Table of Frequency Allocations.<sup>54</sup> In addition, Section 90.305(b) permits mobile units to operate within 30 miles (48 kilometers) of the associated base station.<sup>55</sup> The Commission established these mileage restrictions to protect over-the-air broadcast operations on TV Channels 14-21 located outside of the designated urbanized areas from harmful interference from PLMRS systems operating in the 470-512 MHz band.<sup>56</sup> In its 2001 *Goosetown* decision, the Commission observed that combining the parameters of Sections 90.305(a) and (b) creates a circular area with an 80-mile (128-kilometer) radius where PLMRS stations may operate on a primary basis.<sup>57</sup> Noting that "new and pending applicants seeking a waiver of Section 90.305 whose area of operation extends outside the 80-mile area could negatively impact the availability of DTV spectrum for television stations," the Commission stated that "[a]ny applicant seeking a waiver to operate outside the 80-mile area must demonstrate that it would provide full protection to any existing full-power or low-power TV station, including allotments and pending applications for such stations, at the time the waiver is filed."<sup>58</sup>

16. We find that Franklin has satisfied this requirement. Franklin provided an engineering analysis showing that its operations would not interfere with adjacent channel Station WPCW.<sup>59</sup> We address Franklin's analysis regarding Station WPCW below in paragraph 19, as it pertains to a waiver of another rule, Section 90.307(d). With respect to co-channel, low power TV station W18BC, Franklin modified its applications on April 27, 2010 because "[t]he previous filing by the County showed 45 dB protection based on the requirements of Section 74.707(a)(1)(iii)" and "Section 90.307 requires 50 dB

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<sup>52</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>53</sup> 47 C.F.R. § 90.305(a).

<sup>54</sup> 47 C.F.R. § 2.106.

<sup>55</sup> 47 C.F.R. § 90.305(b).

<sup>56</sup> See Amendment of Parts 2, 89, 91, and 93; geographic reallocation of UHF-TV Channels 14 through 20 to the land mobile radio services for use within the 25 largest urbanized areas of the United States; Petition Filed by the Telecommunications Committee of the National Association of Manufacturers To Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area, Docket No. 18261, *First Report and Order*, 23 FCC 2d 325, 342-343 ¶¶ 42, 46 (1970).

<sup>57</sup> See *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12795 ¶ 9 (2001) (*Goosetown*).

<sup>58</sup> *Goosetown*, 16 FCC Rcd at 12797 ¶ 13. In this regard, we note that on File No. 0003388020, the proposed Clarks Knob base station (location 1), Chambersburg base station (location 3), Roxbury base station (location 4), and Tuscarora base station (location 5) are located more than 128 kilometers from the geographic center of Washington, DC and outside the area where PLMRS operations are primary. Similarly, on File No. 0003390336, the proposed Warren Twp. Base station (location 1) is located more than 128 kilometers from the geographic center of Washington, DC.

<sup>59</sup> See Request for Waivers at 4-7, Attachment 3.

protection.”<sup>60</sup> Franklin states that “Antennas and ERPs have been adjusted to assure 50 dB protection to W18BC.”<sup>61</sup> Accordingly, we find that Franklin’s revised proposed operations would provide adequate protection to Station W18BC. However, we also must address the potential impact of Franklin’s operation on future TV stations, because the Commission is accepting certain applications for digital low power television and TV translator stations,<sup>62</sup> and DTV stations are requesting channel substitutions in order to resolve reception issues associated with the DTV transition.<sup>63</sup>

17. In its reply comments, Franklin analyzed the potential for licensing future full power and low power TV stations on TV Channel 18 in Franklin County.<sup>64</sup> Because TV Channel 18 is allocated to PLMRS in both the Pittsburgh, PA and Washington, DC/MD/VA urbanized areas, and because Section 73.623(e) requires a minimum separation of 250 kilometers between DTV stations and the center coordinates of PLMRS urbanized areas,<sup>65</sup> Franklin observes that the County’s location within 250 kilometers of both city centers would “preclud[e] any full service DTV stations from operation in the county.”<sup>66</sup> Further, a hypothetical LPTV station, “would be at extremely low power, limiting its usefulness[,] and it could not be in the southern portion of the county where [a] majority of the population resides.”<sup>67</sup>

18. We agree that, as a practical matter, it is unlikely that a hypothetical future broadcaster in or near the County could use TV Channel 18, and thus, Franklin’s use of the channel should not negatively impact the availability of DTV spectrum for television stations. Also, the Commission has stated that in order for a PLMRS provider to obtain a waiver to operate outside the 80-mile/128-kilometer radius of primary PLMRS operation, it must accept secondary status to current and future full power and low power TV stations.”<sup>68</sup> Given the circumstances and implementation of this secondary status condition to operations beyond 128 kilometers from the Washington, DC/MD/VA coordinates,<sup>69</sup> we believe that the purposes of Sections 2.106, 90.303, and 90.305(a) would not be undermined by a waiver in the present case.

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<sup>60</sup> Supporting Statement at 1. See 47 C.F.R. §§ 74.707(a)(1)(iii), 90.307.

<sup>61</sup> Supporting Statement at 1. See also Supporting Statement at Attachment One.

<sup>62</sup> See Commencement of Rural, First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Beginning August 25, 2009 and Commencement of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Beginning January 25, 2010, *Public Notice*, 24 FCC Rcd 8911 (MB 2009).

<sup>63</sup> See, e.g., Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Cincinnati, Ohio), MM Docket No. 09-178, RM-11571, *Notice of Proposed Rulemaking*, 24 FCC Rcd 12448 (MB VD 2009); Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Chicago, Illinois), MM Docket No. 09-146, RM-11553, *Notice of Proposed Rulemaking*, 24 FCC Rcd 10664 (MB VD 2009).

<sup>64</sup> See Reply Comments at 1-3.

<sup>65</sup> See 47 C.F.R. § 73.623(e).

<sup>66</sup> Reply Comments at 1.

<sup>67</sup> *Id.* at 2.

<sup>68</sup> *Goosetown*, 16 FCC Rcd at 12798 ¶ 13.

<sup>69</sup> See *infra* para. 25.



19. *Section 90.307(d)*. Section 90.307(d) requires that PLMRS base stations be separated from adjacent channel TV stations by at least 90 miles (145 kilometers).<sup>70</sup> The purpose of Section 90.307(d) is “to protect adjacent channel TV stations from interference caused by PLMRS mobile units operating in or near the TV station’s coverage area.”<sup>71</sup> As noted above, Franklin’s proposed base stations are located less than 90 miles from Station WPCW, which operated on TV Channel 19,<sup>72</sup> thus necessitating a waiver of Section 90.307(d) in order to operate on TV Channel 18 band frequencies. The Commission requires that any waiver request of the separation criteria “must demonstrate that ... affected adjacent channel TV stations would receive 0 dB protection at their Grade B contours.”<sup>73</sup> Franklin provided an engineering analysis to demonstrate that its operations would provide greater than 0 dB protection to Station WPCW’s 64 dBu Grade B contour.<sup>74</sup> Staff reviewed this analysis and concurs with the conclusion. The Commission also requires that “mobile and control stations, associated with base stations located less than the required separation from an adjacent channel TV station, may not operate within 60 miles of that TV station.”<sup>75</sup> In this regard, we note that the Franklin proposes county-wide mobile operations,<sup>76</sup> and the western border of Franklin County is approximately 57 miles from the Station WPCW coordinates. Although Franklin would not meet this criterion for waiver, we find that the excursion of mobile operations within 60 miles of Station WPCW is *de minimis*. Therefore, we find that application of Section 90.307(d) to the instant case would not serve the purpose of the rule.

20. *Section 90.311*. This rule provides specific frequency ranges available for assignment to PLMRS entities in the 470-512 MHz band depending on urbanized area.<sup>77</sup> In the Washington DC/MD/VA area, TV Channel 18 band frequencies 494.30625 to 496.99375 MHz are available for base and mobile use, and frequencies 497.30625 to 499.99375 MHz are available for mobile use.<sup>78</sup> Since Franklin does not request any frequencies outside these ranges, its request for waiver of this rule is moot.

21. *Section 90.313(c)*. This rule provides, *inter alia*, that “[a] licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair.”<sup>79</sup> Franklin argues that “[s]uch a requirement is unworkable for a complex, multi site, radio system.”<sup>80</sup> Specifically, Franklin argues that “[t]he system must work as a single unit on all channels and at all sites to provide the needed communications to first responders,” and “[b]uilding one channel at one site before even being able to request a second channel or second site frustrates the overall planning and funding process.”<sup>81</sup> Franklin argues that “[t]he rule may be appropriate in the context of a

<sup>70</sup> See 47 C.F.R. § 90.307(d).

<sup>71</sup> County of Dauphin, Pennsylvania, *Order*, 22 FCC Rcd 8628, 8631 ¶ 10 (PSHSB PD 2007).

<sup>72</sup> See Request for Waivers at 5-6.

<sup>73</sup> Private Land Mobile Operations in the 470-512 MHz Band, *Public Notice No. 20291* (rel. Oct. 22, 1991) (*1991 Public Notice*) at 1.

<sup>74</sup> See Request for Waivers at Attachment 3.

<sup>75</sup> *1991 Public Notice* at 1.

<sup>76</sup> See File Nos. 0003388020 and 0003390336.

<sup>77</sup> 47 C.F.R. § 90.311.

<sup>78</sup> See *id.*

<sup>79</sup> 47 C.F.R. § 90.313(c).

<sup>80</sup> System Description at 9.

<sup>81</sup> *Id.*

stand-alone business repeater, but it cannot be applied to a system such as being proposed by Franklin County.”<sup>82</sup> Franklin states that strict enforcement of the rule in this instance “would be extremely burdensome and would likely result in the system never being constructed.”<sup>83</sup> Franklin also asserts that enforcement would not serve the rule’s intended purpose of preventing spectrum hoarding, which “[c]learly that is not what is happening with the instant proposal.”<sup>84</sup>

22. We agree with Franklin that the purpose of Section 90.313(c) would not be undermined by a waiver in the present case. Section 90.313(c) by its terms seeks to ensure that licensed spectrum is used efficiently by requiring full utilization before additional spectrum resources will be allocated. As a matter of staff experience, this rule serves primarily to ensure that existing systems operate with maximum spectrum efficiency, rather than limiting applications for more comprehensive new systems such as Franklin’s. We also agree that enforcing the requirement in this instance is not necessary to protect against spectrum hoarding in light of the spectrum plan Franklin has presented for its system, and would otherwise unnecessarily impair Franklin’s ability to deploy a functioning multi-channel simulcast system. Therefore, we find that Franklin has justified its request.<sup>85</sup>

23. *Public Interest.* In addition to finding that the relevant rules would not be undermined by a grant of the waiver request, our analysis under the first prong of the Section 1.925 waiver standard requires a finding that grant of the waiver would be in the public interest.<sup>86</sup> Franklin states that “[t]he public interest will be served by allowing the County to construct the proposed facility and no incumbent licensee will be affected.”<sup>87</sup> Franklin asserts that “[t]he requested licenses will allow the County to build a modern communications system in further support of the safety of life and property.”<sup>88</sup> We find that the proposed system would further the public interest by affording Franklin’s responders and citizens with the necessary spectrum to enable the County to protect the lives and property in its care. Indeed, Section 1 of the Act defines one of the Commission’s over-arching purposes as “promoting safety of life and property through the use of radio communication.”<sup>89</sup> Moreover, since it is unlikely that a broadcaster could use TV Channel 18 in or near Franklin County, we also find it in the public interest to permit Franklin to use this spectrum for public safety purposes on a secondary basis as described in this Order.

24. In addition, we find that grant of Franklin’s waiver request will promote interoperability between Franklin and its various agencies and municipalities. Notwithstanding the availability of 700 MHz band spectrum, we find it in the public interest to grant use of TV Channel 18 spectrum to Franklin to enable it “to leverage ... its current UHF equipment,”<sup>90</sup> and because “the new system will provide both needed coverage and interoperability between all public safety agencies.”<sup>91</sup> The County also states that it

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 10.

<sup>84</sup> *Id.*

<sup>85</sup> See System Description at 6-8.

<sup>86</sup> See 47 C.F.R. § 1.925(b)(3)(i).

<sup>87</sup> Request for Waivers at 8.

<sup>88</sup> *Id.* at 9.

<sup>89</sup> 47 U.S.C. § 151.

<sup>90</sup> Reply Comments at 1.

<sup>91</sup> Request for Waivers at 8.

“desires to share the system with other Public Safety organizations once it becomes operational.”<sup>92</sup> In this respect, the County will be authorized “to share its system with any other public safety entity on a non-profit basis” under the provisions of Section 90.179 of the Commission’s rules.<sup>93</sup> While our decision to grant Franklin County’s request in this instance will facilitate “county-wide interoperability,”<sup>94</sup> we strongly urge public safety entities contemplating waivers for TV and other non-public safety spectrum to consider use of the 700 MHz band to promote regional and nationwide interoperability, consistent with the public interest.

#### IV. CONCLUSION

25. Based on the record before us, we find that grant of Franklin’s waiver request as conditioned herein is warranted and consistent with the public interest. However, to protect certain operations beyond 128 kilometers we place the following condition on the grant of File No. 0003388020:

The following operations on TV Channel 18 spectrum (494-500 MHz) are secondary to current and future full power and low power TV stations: fixed base station locations 1, 3, 4, 5, and 7; and any mobile unit that travels beyond 128 kilometers from the Washington, DC/VA/MD coordinates, 38° 53’ 51.4” North latitude, 77 ° 00’ 31.9” West longitude, as listed in 47 C.F.R. § 90.303.

Similarly, grant of File No. 0003390336, is subject to the following condition:

The following operations on TV Channel 18 spectrum (494-500 MHz) are secondary to current and future full power and low power TV stations: any mobile unit that travels beyond 128 kilometers from the Washington, DC/VA/MD coordinates, 38° 53’ 51.4” North latitude, 77 ° 00’ 31.9” West longitude, as listed in 47 C.F.R. § 90.303.

#### V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned applications filed by the County of Franklin, Pennsylvania, on April 9, 2008, IS GRANTED, subject to the condition specified herein, and File Nos. 0003388020 and 0003390336 SHALL BE PROCESSED consistent with this Order and the Commission’s rules.

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<sup>92</sup> System Description at 10.

<sup>93</sup> *Id.* at 9. See 47 C.F.R. § 90.179.

<sup>94</sup> System Description at 10.

27. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy Division  
Public Safety and Homeland Security Bureau